

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



UPPER LAKE UNION ELEMENTARY SCHOOL)
DISTRICT,)
)
Employer,) Case No. SF-R-689
)
and) PERB Decision No. 735
)
CALIFORNIA SCHOOL EMPLOYEES) May 4, 1939
ASSOCIATION AND ITS UPPER LAKE)
CHAPTER #427,)
)
Exclusive Representative.)
_____)

Appearances: John A. Drummond, Attorney, for Upper Lake Union Elementary School District; Michael Pirsch, Field Representative, for California School Employees Association and its Upper Lake Chapter #427.

Before Hesse, Chairperson; Porter and Camilli, Members.

DECISION

CAMILLI, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions filed by the California School Employees Association and its Upper Lake Chapter #427 (CSEA or Union) and the Upper Lake Union Elementary School District (District) to the attached proposed decision of the Board agent insofar as it found that the District secretary is a confidential employee under section 3540.1 of the Educational Employment Relations Act (EERA),¹ and therefore not

¹The EERA is codified at Government Code section 3540 et seq. All statutory references herein are to the Government Code unless otherwise noted.

Section 3540.1(c) states:

As used in this chapter:

an appropriate member of the collective bargaining unit to be represented by CSEA. After a review of the entire record, the Board affirms the findings of fact and conclusions of law of the Board agent, consistent with the following discussion.²

FACTUAL SUMMARY

Pearl Elliston (Elliston) works for the Upper Lake Union Elementary School District as a District secretary and her salary is paid by the District. This District is made up of one school only, the Upper Lake Elementary School.³ Elliston has an office in the elementary school next to the office of the principal, Mr. Lombard. Mr. Detton, superintendent of both the Upper Lake Union Elementary School District and the Upper Lake Union High School District, maintains an office in the high school. Elliston performs work for both Lombard and Detton.

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(c) "Confidential employee" means any employee who, in the regular course of his or her duties, has access to, or possesses information relating to, his or her employer's employer-employee relations.

²We note the Union's exception to the Board agent's factual finding regarding the number of classified employees in the District. The District affirms in its responsive brief that there are 39 classified employees, not 51, as found by the Board agent.

³There is also an Upper Lake Union High School District, which consists only of the Upper Lake Union High School.

Lombard is involved in the evaluation and dismissal of school employees and the processing of employee grievances.⁴ As the secretary to Lombard, Elliston types employee evaluations and other documentation relevant thereto. She has typed documents regarding employee grievances, has participated in meetings as a witness, and typed statements by Lombard regarding employee grievances and employee terminations. Elliston also maintains the personnel files, locking the file cabinet each night and opening it each morning, as well as helping the bookkeeper who calculates employment contracts, attendance records, and other personnel documents.

Superintendent Detton is involved in labor negotiations for the District. As District secretary, Elliston types the Governing Board Information Packet (Board Packet) which is a memorandum sent by Detton to each of the District board members delineating employee proposals and outlining his recommendations with regard to each, including counterproposals and negotiation strategy.⁵ In addition, Elliston takes and transcribes the

⁴There is a formal grievance procedure available to employees which is found in the board policy book which Elliston maintains.

⁵We find CSEA's exception that the Board Packet is a public record to be without merit. Just as negotiation meetings between the District and its negotiator are exempt from the public meeting laws under section 3549.1(d) of EERA which reads as follows:

All the proceedings set forth in subdivisions (a) to (d), inclusive, shall be exempt from the provisions of Sections 965 and 966 of the Education Code, the Bagley Act [Article 9 (commencing with Section 11120) of Chapter 1

minutes of the board meetings. At the board meetings issues discussed include responses to employee proposals regarding wages, conditions of work, employment benefits, employee terminations or dismissals, and other personnel and negotiation issues.

DISCUSSION

The only issue presented by the parties' exceptions to the Board agent's decision is whether the District secretary should be designated a confidential employee under section 3540.1 of EERA, thereby excluding her from membership in the petitioned for

of Part 1 of Division 3] and the Ralph M. Brown Act (Chapter 9 commencing with Section 54950) of Part 1 of Division 2 of Title 5, unless the parties mutually agree otherwise:

.

(d) Any executive session of the public school employer or between the public school employer and its designated representative for the purpose of discussing its position regarding any matter within the scope of representation and instructing its designated representatives.
(Emphasis added.)

so too, we believe the negotiation memoranda with respect thereto are also exempt from disclosure under Government Code section 6254(a) of the Public Records Act of the State of California (Gov. Code secs. 6250 et seq.). The Board Packet, an internal memorandum which contains negotiation strategy and suggestions for upcoming board sessions, is, therefore, found to be exempt from disclosure under the Public Records Act, inasmuch as the public airing of such proposals and suggestions regarding future labor relations issues would undermine the collective bargaining process and render it ineffective, and would clearly be against the public interest.

bargaining unit.⁶ The District's exceptions concerning the failure of the Board agent to include all possible facts in the record supportive of the determination that Elliston is a confidential employee have no merit. We find the Board agent need not list each and every fact in support of the determination. Rather, it is sufficient to identify the salient and most important facts, so long as the record as a whole substantiates the decision.

CSEA excepts to the Board agent's reliance on Sierra Sands Unified School District (1976) EERB Decision No. 2 [1 PERC 3],⁷ which enunciated the policy that an employer should be allowed a nucleus of employees upon which it could rely in formulating its

⁶If a District secretary is a confidential employee, she cannot be represented by CSEA according to section 3543.4, which states:

No person serving in a management position, senior management position, or a confidential position shall be represented by an exclusive representative. Any person serving in such a position may represent himself or herself individually or by an employee organization whose membership is composed entirely of employees designated as holding such positions, in his or her employment relationship with the public school employer, but, in no case, shall such an organization meet and negotiate with the public school employer. No representative shall be permitted by a public school employer to meet and negotiate on any benefit or compensation paid to persons serving in a management position, senior management position, or a confidential position.

⁷Prior to January 1, 1978, PERB was know as the Educational Employment Relations Board (EERB).

labor relations policy. CSEA further argues that National Labor Relations Board (NLRB) decisions stating the test for determining who is a confidential employee are controlling on this particular issue. We disagree, and will address those two issues.

The National Labor Relations Act (NLRA) does not contain any specific statutory exclusion for confidential employees as does EERA. The NLRA does not contain even an implied exclusion of confidential employees. (See National Labor Relations Board v. Hendricks City Rural Electric Corporation (1981) 454 U.S. 170, 102 S.Ct. 216.) Conversely, EERA has specific statutory language defining confidential employees and excluding them from being represented by an exclusive representative. Because the NLRA contains no parallel provision or similar language to EERA, we are not persuaded by NLRB decisions, and accordingly adhere to our precedent decisions on this subject. (See Moreno Valley Unified School District v. PERB (1983) 142 Cal.App.3d 191, 196; and Los Angeles Unified School District (1976) EERB Decision No. 5 [1 PERC 18], at p. 3, footnote 1.)

We reaffirm Sierra Sands, *supra*, which defines a confidential employee as "any employee who, in the regular course of his duties, has access to, or possesses information relating to, his employer's employer-employee relations." In Fremont Unified School District (1976) EERB Decision No. 6 [1 PERC 21], p. 11, the Board reaffirmed Sierra Sands and held that "employer-employee relations" includes "at the least, employer-employee negotiations and the processing of employee grievances."

Confidential status is limited to (1) those employees who assist and act in a confidential capacity to persons who formulate, determine and effectuate management policies in the field of labor relations; and (2) persons who, although not assisting persons exercising managerial functions in the labor relations area, regularly have access to confidential information concerning anticipated changes which may result from collective bargaining negotiations. (See Unit Determination for Professional Librarians of the University of California (1983) PERB Decision No. 247b-H [7 PERC 14107], p. 21.) An employee must have involvement substantial enough so that the employer's ability to negotiate on an equal posture with the union would be jeopardized if the information were made prematurely public. (See Campbell Union High School District (1978) PERB Decision No. 66 [2 PERC 2166], p. 4, where the Board held a principal's secretary who maintained files and processed correspondence regarding negotiations and employee grievances was a confidential employee.) In Imperial Unified School District (1987) PERB Decision No. 647 [12 PERC 19013], "in the regular course of his duties" was held to mean that more than a fraction of the employee's time was spent on confidential matters, although the frequency of access was not important.

As the District secretary, Elliston regularly types the Board Packet which contains information regarding employer-employee negotiations, including negotiation tactics and strategy. If the Board Packets were made available publicly or

to the Union, it would jeopardize the District's ability to negotiate on an equal posture with regard to those issues. Elliston also types employee evaluations and documentation relating to employee grievances, as well as maintaining personnel files and documents. She has attended employee grievance meetings and has typed documents relating thereto.⁸

Based upon the above, we find that Elliston has access to or possesses information relating to both employer-employee negotiations and the processing of employee grievances. We hold that her involvement with such employer-employee relations is substantial enough so that the District's ability to negotiate on an equal posture would, in fact, be jeopardized if such information were made prematurely public.

ORDER

Based upon a review of the entire record, we affirm the Board agent's finding that Elliston is a confidential employee under section 3540.1 of EERA and is, therefore, not a proper member of the bargaining unit which CSEA petitioned to represent.

Chairperson Hesse and Member Porter joined in this Decision.

⁸It should be noted that although the Board affirms the policy enunciated in Sierra Sands, supra, that an employer should be allowed a small nucleus of individuals to assist him in development of the employer's positions for the purposes of employer-employee relations, we need not today decide the issue of whether an employer must show that one is already performing confidential duties even where a representation petition has recently been filed. We find that Elliston is presently performing sufficient confidential duties to warrant her designation as a confidential employee.

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD



UPPER LAKE UNION ELEMENTARY)	
SCHOOL DISTRICT,)	
)	Representation
Employer,)	Case No. SF-R-689
	>	
and)	PROPOSED DECISION
)	(8/16/88)
CALIFORNIA SCHOOL EMPLOYEES)	
ASSOCIATION AND ITS UPPER LAKE)	
CHAPTER #427,)	
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Exclusive Representative.))	

Appearances: John A. Drummond, Schools Attorney, for Upper Lake Union Elementary School District; Michael Pirsch, Field Representative, for California School Employees Association and its Upper Lake Chapter #427.

Before Jerilyn Gelt, Hearing Officer.

PROCEDURAL HISTORY

On June 12, 1987, the California School Employees Association and its Upper Lake Chapter #427 (CSEA) filed a request for recognition as the exclusive representative of a comprehensive unit of classified employees employed by the Upper Lake Union Elementary School District (District). On October 7, 1988, the District filed a denial of recognition with the Public Employment Relations Board (PERB or Board), doubting the appropriateness of the requested unit. An investigation/settlement conference was conducted by PERB on November 10, 1987, at which time the parties settled all issues with the exception of the alleged confidential status of the

This proposed decision has been appealed to the Board itself and may not be cited as precedent unless the decision and its rationale have been adopted by the Board.

District secretary and the alleged supervisory status of the maintenance supervisor and supervisor of food services. An election was held on December 17, 1987 pursuant to a Directed Election Order, and CSEA was certified as the exclusive representative of the classified employees in the District on January 2, 1988. A formal hearing was held to resolve the status of the classifications in dispute on December 10, 1987 and January 8, 1988.

ISSUES

1. Is the District secretary a confidential employee within the meaning of section 3540.1(c) of the Educational Employment Relations Act (EERA or Act)?¹

2. Is the supervisor of food services a supervisory employee within the meaning of section 3540.1(m) of the EERA?

3. Is the maintenance supervisor a supervisory employee within the meaning of section 3540.1(m) of the EERA?

DISCUSSION

The Upper Lake Union Elementary School District is a one-school district with an average daily attendance of 542 students. At the time of the hearing, it employed one principal, 25 teachers, and 51 classified employees. There are no classified employees designated supervisory or confidential in the District other than those in dispute in this case. The

¹The EERA is codified at Government Code section 3540 et seq. All statutory references herein are to the Government Code unless otherwise noted.

teachers are not represented by an exclusive representative under the EERA. The District shares a superintendent with the Upper Lake Union High School District, also a one-school district.

District Secretary

Pearl Elliston has been employed as a secretary in the District since 1973. She functions in a dual capacity as school secretary, reporting to Principal Robert Lombard, and as District secretary, reporting to Superintendent Richard Detton. She is evaluated by Lombard. Her duties as school secretary include typing evaluations of some classified and all certificated employees, maintaining personnel files, answering the telephone, and other clerical tasks required by Lombard. In her capacity as District secretary, Elliston takes and types minutes of school board meetings and types Governing Board Information Packets prepared by Detton. These packets contain such information as Detton's responses to proposals presented by both classified and certificated employees regarding salary increases, health and welfare benefits, hours, and seniority. The packets also include Detton's analyses of the impact of these proposals on the District, as well as his recommendations for negotiation strategy and board action. For example, in the May 26, 1987 packet,² Detton recommended that the governing

²See District Exhibit C.

board approve the concept of paid prescriptions proposed by the teachers, but that the teachers be asked to trade-off one percent of their salary for this item. In that same packet, Detton advised the governing board not to grant the six percent salary increase requested by the classified employees, but to offer three percent instead.

Government Code section 3540.1(c) provides:

"Confidential employee" means any employee who, in the regular course of his or her duties, has access to, or possesses information relating to, his or her employer's employer-employee relations.

In Sierra Sands Unified School District (1976) EERB Decision No. 2, the Board set forth its general policy regarding confidential status, noting that Government Code section 3540.1(j) excludes confidential employees from coverage under the Act. The Board held that an employer should be allowed a small nucleus of individuals to assist the employer in its employer-employee relations, and that the employer's right to the undivided loyalty of its confidential employees outweighs the denial of representation rights to those employees. However, the mere access to or possession of confidential information by an employee will not, by itself, result in a confidential designation. The individual must have access to or possess sufficient information to warrant the

³Prior to January 1, 1978, PERB was known as the Educational Employment Relations Board or EERB.

conclusion that the employer's ability to negotiate with employees from an equal posture might be jeopardized if the information was prematurely made public.

In Fremont Unified School District (1976) EERB Decision No. 6, the Board interpreted "employer-employee relations" to include, at least, negotiations and the processing of grievances. The Board also noted that section 3540.1(c) does not distinguish between information relating to certificated employees and classified employees.

In this case, it is clear that the Governing Board Information Packets prepared by the District secretary are confidential in nature. The packets contain recommendations for negotiation strategy proposed by the superintendent as well as his analyses of the impact on the District of the proposals put forth by both certificated and classified employee groups.⁴ Thus, the District secretary's preparation of these packets relating to negotiations warrants designating her position as confidential.

Furthermore, since there are currently no confidential employees in the District, the designation of the District secretary as confidential falls well within the "small nucleus" guidelines established by the Board. It is highly probable that the need for at least one confidential employee in the

⁴The record does not support CSEA's claim that these packets are public documents.

District will increase now that formal bargaining with an exclusive representative under the Act has become a reality.

Supervisor of Food Services

At the time of this hearing, the incumbent supervisor of food services, Chris Morrow, had been employed in that position for nearly three and one-half years.⁵ Morrow is responsible for the food service program in both the Elementary School District and the High School District. She plans menus, monitors food supplies, prepares state reports and monthly budgets, assists in food preparation and, in general, oversees the operation of the kitchens.

There are four other food service employees employed by the District: one full-time cook, Paulette Mayette; two part-time cook's helpers, JoAnn Dolan (at the elementary school) and Terri Strong (at the high school), and a part-time bookkeeper, Sandy Mankins. Morrow is paid at a higher rate than the other food service employees.

Morrow has participated in the hiring process in varying degrees. During the 1984-85 school year, Morrow informed Lombard that she needed another food service employee on an on-call basis. Lombard instructed her to find someone for the

⁵Morrow's original title, cafeteria supervisor, was changed to food service director at her request when the High School District became an additional responsibility in 1986 -87. Her title was changed to supervisor of food services in the fall of 1987.

job, which she did. She then hired that person, Donna Allendorf, without Lombard's input or review. Allendorf continued to work for the District through the 1986-87 school year.

In the fall of 1986, she screened applications for the newly-created cook's helper position at the high school, interviewed applicants, and recommended for hire one of the applicants, Jacqueline Bind. Bind was hired by the District based solely on Morrow's recommendation. No hiring panel was convened due to a pressing need to fill the vacancy.

Morrow was also involved in hiring Dolan in late November, 1987. She screened approximately 30 applications, selected the applicants to be interviewed (including one by request of Lombard), sat on the hiring panel with Lombard, a community member and one other person, and, by her uncontested testimony, was instrumental in persuading the panel to hire Dolan.

In early November, 1987, Strong, who was working for the District as an aide, was hired as a cook's helper over the objections of Morrow, who felt that she was unqualified for the position due to lack of experience.⁶

Morrow is responsible for training and evaluating the food service employees. She has issued both oral and written reprimands in her role as food service supervisor. For

⁶As discussed below, Morrow's hiring responsibilities had been taken away from her during this time.

example, she has orally reprimanded Mayette regarding tardiness and her performance of her cleaning duties, although such reprimands have occurred only twice in Mayette's approximately ten years of employment. She has also orally reprimanded cafeteria aides regarding their lack of proper attention both to the students and to their cleaning responsibilities. During the 1986-87 school year, she reprimanded Mankins, both orally and in writing, regarding her record-keeping, tidiness and cash management.

During the fall of 1986, Morrow frequently visited the high school to evaluate its new food service program. She became unhappy with Bind's performance there and switched her assignment, moving her to the elementary school for the second half of the school year. Subsequently, she recommended that Bind be dismissed. Bind resigned prior to any action being taken regarding that recommendation.

Apparently due to employee complaints about Morrow, several of her duties were removed from her during May 1987 and were reinstated without explanation on or about November 20, 1988, shortly after the PERB investigation/settlement conference. Those duties included calling substitutes, approving overtime and time off, assigning hours and work, and participating on hiring panels. She was also informed by registered mail during the summer vacation that her title had been changed to supervisor of food services, a change which did not affect her

salary.

In its brief, CSEA cites Antioch Unified School District (1984), PERB Decision No. 415 which held that an employee organization could prevail in a unit modification case "... if it successfully argued that the District had fraudulently misrepresented the duties performed by the [employees in dispute], illegally changed their duties so as to give the appearance of supervisory status, or engaged in some other fraudulent or illegal conduct." Although the exact nature of CSEA's allegations against the District pursuant to Antioch is unclear from its brief, it appears to be arguing that the District should be precluded from seeking the exclusion of the supervisor of food services from the unit based on its actions in reinstating alleged supervisory duties to Morrow subsequent to the investigation/settlement conference . However, while the timing of the District's actions might raise some suspicions, the record contains no evidence which would support the type of fraudulent or illegal activity envisioned by Antioch. Therefore, a determination of supervisory status will be made based on the facts stated above.

Government Code section 3540.1(m) states:

"Supervisory employee" means any employee, regardless of job description, having authority in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or the

responsibility to assign work to and direct them, or to adjust their grievances, or effectively recommend such action, if, in connection with the foregoing functions, the exercise of such authority is not merely of a routine or clerical nature, but requires the use of independent judgment.

Section 3540.1(m) is written in the disjunctive; therefore, an employee need perform or effectively recommend only one of the enumerated functions or duties to be a supervisor.

Sweetwater Union High School District (1976) EERB Decision No. 4.

The supervisor of food services possesses several responsibilities which warrant a finding of supervisory status. She has used independent judgement when screening applications and selecting candidates for interviews; she has hired employees without higher review and has also effectively recommended employees for hire. Sacramento City Unified School District (1977) EERB Decision No. 30A; Campbell Union High School District (1978) PERB Decision No. 66.

The supervisor of food services has also exercised supervisory authority by changing the assignments of food service employees when necessary. She trains new employees and determines if substitutes are needed. Sacramento City, supra. In addition, she is the only authority on site and is solely responsible for the day-to-day operations of the kitchens. Antioch, supra. Thus, the supervisor of food services is found to be a supervisory employee under the EERA.

Maintenance Supervisor

The incumbent maintenance supervisor, Bob Clouse, had been employed in that position for three years at the time of the hearing. Clouse reports directly to Lombard. His regular work shift is 6:30 a.m. to 3:00 p.m., although he occasionally reports to work at 6:00 a.m. in order to make repairs in the classrooms prior to the beginning of the school day. In general, his responsibilities include maintaining District property and overseeing the work of two full-time custodians, Ben Biter and Gary Winters, and two part-time custodians, Sidney Fabish and Carolyn Hoover. Clouse is paid at a higher rate than the custodians.

All of the custodians were hired while Clouse has been in his present position. Clouse participated on the committee which interviewed both Biter and Winters. The committee which interviewed Biter consisted of Clouse, Lombard, a board member, a teacher and a community member. That panel's first choice resigned after one year, and Biter was then hired from the list without another interview. He had been working for the District part time when he was offered the full-time position.

Winters was hired by the concurrence of an interview committee consisting of Clouse, Lombard, a teacher and a community member. Fabish was hired without going through the formal interview process, although the facts surrounding the method of his employment are unclear.

Hoover was hired as a custodian by Lombard after her custodial experience was revealed during an interview by a panel convened to fill a food service vacancy. Clouse did not participate on the panel and objected to his lack of involvement. However, he agreed to "give her a try," and subsequently agreed with Detton's suggestion that she be made permanent.

The duties of the custodians are well-established. Any special instructions are communicated by Clouse to the custodians either in person or by messages left in the custodians' room or with Winters. Clouse makes changes in assignments when the addition of new classrooms creates an inequitable distribution of work. Clouse checks on the rooms on an irregular basis and informs the custodians of any concerns regarding the performance of their duties. He testified that Winters, who works the day shift with him, needs little supervision. However, if Winters neglects to do something, Clouse will bring it to his attention. If a custodian is ill, Clouse will discuss with Lombard whether to ask Fabish to work extra hours or to have the custodians work a minimum cleaning day.

Clouse evaluates the custodians, turns the evaluations in to Lombard for his review, and then discusses the evaluations with the employees. Lombard has discussed evaluations with Clouse on at least two occasions. Clouse testified that he

has never recommended dismissal for an employee. One probationary employee, Austin Davis, was terminated by the governing board two weeks after receiving a negative evaluation from Clouse. However, Clouse did not expressly recommend that Davis be dismissed and was not informed of the dismissal until he returned from sick leave.

Biter was also dismissed (by Lombard) while Clouse was on sick leave. He was rehired by Lombard and Detton shortly thereafter. The dismissal took place without Clouse's knowledge.

Clouse testified that he has issued written reprimands, to Biter, Davis and probably one other custodian. Detton testified that Clouse was not the only person who has issued written reprimands to the custodians.

Clouse is responsible for insuring that adequate supplies are available. However, Lombard must co-sign any purchase orders Clouse issues for cleaning supplies and tools.

If a teacher has a complaint regarding the custodial service, he or she usually takes that complaint to Lombard, who then informs Clouse. The teacher may inform Clouse directly if s/he happens to see him.

As noted above, an employee must use independent judgement in performing or effectively recommending at least one of the actions enumerated in Government Code section 3540.1(m) to be found a supervisor. In this case, the record does not support such a finding.

While the maintenance supervisor evaluates the custodians, there is no evidence that he has effectively recommended that a custodian be given permanent status, disciplined or dismissed pursuant to those evaluations. Although the District strongly emphasizes the role of the maintenance supervisor in the evaluation procedure, Government Code section 3540.1(m) nowhere indicates that evaluation of employees by itself is a supervisory criterion.

The maintenance supervisor has participated in the hiring process; however, his involvement is as part of a selection committee and it is the committee, not the individual members, that makes the recommendation regarding job applicants. In fact, one custodian was interviewed by a panel which did not include the maintenance supervisor. Such a limited role in hiring does not achieve a dimension of "hiring" or "effectively recommending" hiring under Board precedent. Foothill-DeAnza Community College District (1977) EERB Decision No. 10; Unit Determination for the State of California (1980) PERB Decision No. 110c. See also Saxon Theatre (1981) 259 NLRB 1366, where an employee's involvement in the hiring process is found to be nonsupervisory when his role is that of a skilled craftsman with knowledge of qualified applicants.

The record reflects that the maintenance supervisor acts as an experienced leadperson rather than a supervisor in assigning and directing the work of the custodians. New Haven Unified

School District (1977) EERB Decision No. 14. While he makes occasional changes in assignments, such changes require only minor decisional authority and are, therefore, not indicative of supervisory status. Cantua Elementary School District (1983) PERB Decision No. 295.

In previous cases, the Board has found employees with far greater authority than that possessed by The maintenance supervisor to be nonsupervisory. For example, in Oakland Unified School District (1978) PERB Decision No. 50, PERB held supervisory custodians II-V to be rank-and-file leadpersons despite their authority to prepare schedules, make routine work assignments and evaluate employees. In Foothill-DeAnza CCD, supra, custodial foremen were held nonsupervisory despite evidence that they prepared evaluations, could initiate termination proceedings, make hiring and promotion recommendations and could direct employees to correct deficient job performance. In light of these cases and based on the evidence herein, the maintenance supervisor is found not to be a supervisor under the EERA.

PROPOSED ORDER

Based upon the foregoing and the entire record in this matter, it is found that:

1. The District secretary is a confidential employee within the meaning of Government Code section 3540.1(c), and, therefore, is not a part of the classified bargaining unit.

2. The supervisor of food services is a supervisor within the meaning of Government Code section 3540.1(m), and, therefore, is not a part of the classified bargaining unit.
3. The maintenance supervisor is not a supervisor within Government Code section 3540.1(m), and, therefore, is a part of the classified bargaining unit.

Right of Appeal

Pursuant to California Administrative Code, title 8, part III, section 32305, this Proposed Decision and Order shall become final unless a party files a statement of exceptions with the Board itself at the headquarters office in Sacramento within 20 days of service of this Decision. In accordance with PERB Regulations, the statement of exceptions should identify by page citation or exhibit number the portions of the record, if any, relied upon for such exceptions. See California Administrative Code, title 8, part III, section 32300. A document is considered "filed" when actually received before the close of business (5:00 p.m.) on the last day set for filing, ". . . or when sent by telegraph or certified or Express United States mail, postmarked not later than the last day set for filing . . ." See California Administrative Code, title 8, part III, section 32135. Code of Civil Procedure section 1013 shall apply. Any statement of exceptions and supporting brief must be served concurrently with its filing upon each party to this proceeding. Proof of service shall accompany each copy served on a party or filed with the Board

itself. See California Administrative Code, title 8, part III, sections 32300, 32305 and 32140.

Dated: August 16, 1988

Jerilyn Gelt
Hearing Officer